

Procurement Services Division

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To: Agency Facility Managers

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Re: Implementation of Act 97 of 2005

On June 1, 2005, the Governor signed Act 97 of 2005. This Act amended §11-35-3030(4)(a) of the Consolidated Procurement Code and changed the maximum amount of retainage that may be withheld from 5% to 3½ %. The Act is effective for any contract entered into after June 1, 2005. For existing contracts, the limit of 5% retainage still applies. This requires changes to the A101 and A201. For contracts that were bid and awarded after June 1, 2005, but were solicited using the 5% limit, agencies should reduce the retained amount to 3½ %.

As I have said previously, until such time as we elect to revise the Manual, we would implement statutory changes by providing agencies with suggested wording for an agency-issued supplemental 00811, revising the published 00811-OSE. Suggested wording is attached.

Changes to the State Contract for Construction Pursuant to Act 97 of 2005

1. Instructions for Completion of **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR** (AIA Document A101 — 1997 Edition), Item 5.1.6. delete and replace with the following:

5.1.6 *Enter a maximum of “...three and one-half (3.5%)...” of the Contract Sum for both “completed work” and for “materials and equipment delivered and suitably stored.”*

2. 00501-OSE, Item 3.10, delete and replace with the following:

Delete Clause 5.1.7.1 and replace with the following:

Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the Contract Sum, less retainage on the Contract Sum as established in Subparagraph 9.4.1 of the A201, as amended, less any amounts the A/E shall determine as the cost for Incomplete or Defective Work and retainage applicable to such work, unsettled claims, Step One Liquidated Damages then due, and anticipated Step Two Liquidated Damages, if any.

3. 00811-OSE, Item 3.84, delete all and replace with the following:

Delete Subparagraph 9.3.1 and replace with the following:

At least twenty-one (21) days before the date established for each progress payment, the Contractor shall submit to the A/E an itemized Application for Payment for operations properly completed and material suitably stored as of the date of application. Such Applications for Payment shall be correlated with the Schedule of Values as approved in accordance with Subparagraph 9.2.1. The Contractor's Applications for Payment shall be in a form acceptable to the A/E, notarized if required by the A/E, and shall be supported by such data to substantiate its accuracy as the A/E may require, such as copies of requisitions from subcontractors and material suppliers. The Contractor's Applications for Payment shall apply retainage, as established in Subparagraph 9.4.1, to the amount claimed.

4. 00811-OSE, new Item 3.85A, insert the following:

Add the following sentence at the end of Subparagraph 9.4.1:

The net amount certified by the A/E to be properly due for each Application for Payment, until the Application for Final Payment, shall reflect the

Agency's retainage of three and one-half percent (3.5%) of the amount otherwise due, unless otherwise defined in these Contract Documents.

5. 00811-OSE, Item 3.86, delete Clause 9.6.2.1 and replace with the following:

9.6.2.1 (a) Contractor's attention is directed to §11-35-3030(4) of the SC Code of Laws, as amended, and the Manual concerning the imposition and release of retainage on construction contracts and subcontracts. The amount of retainage imposed by the Agency shall not exceed the amount allowed by §11-35-3020(4) of the SC Code, as amended, and shall be as established in Subparagraph 9.4.1 of the Contract Documents.

(b) In no event shall a Contractor impose a greater percentage of retainage upon a subcontractor or material supplier than has been imposed by the Agency upon the Contractor.

6. 00811-OSE, Item 3.92, delete Clause 9.8.5.1 and insert the following:

9.8.5.1 Upon such acceptance of Substantial Completion of the Work, or designated portion thereof, and upon application by the Contractor and certification by the A/E, the Agency shall make payment for such Work, or portion thereof, as provided in the Contract Documents. The balance payable to the Contractor shall include the following: the amount of retainage as established in Subparagraph 9.4.1, less any retainage released pursuant to Subparagraph 9.6.2; that amount equal to the cost to complete or to correct the Uncompleted or Defective Work, each as determined by the A/E; and, that amount equal to the full amount of Liquidated Damages, if any. Retainage shall continue until Final Completion and Final Payment.